

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
Charles W. Sims, D.D.S.
License No. D9005

**STIPULATION AND ORDER FOR
STAYED SUSPENSION AND LIMITED
AND CONDITIONAL LICENSE**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minn. Stat. ch. 150A, § 214.10, and § 214.103 to license and regulate dentists, to refer complaints against dentists to the Attorney General for investigation, and to take disciplinary action when appropriate.

After receiving a complaint against Charles W. Sims ("Licensee"), the Board's Complaint Committee ("Committee") reviewed the complaint and referred it to the Minnesota Attorney General's Office for investigation. Subsequently, the Committee received and reviewed the investigative report. In January 2008, Licensee agreed to and signed a Stipulation to Cease Practicing Clinical Dentistry from the Board which prohibited Licensee from practicing clinical dentistry in the State of Minnesota. On February 22, 2008, the Committee held a disciplinary conference with Licensee and his attorney regarding his ability to practice dentistry. As a result, the Committee and Licensee have agreed that the matter may now be resolved by this stipulation and order.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A. Jurisdiction. Licensee holds a license to practice dentistry in the State of Minnesota from the Board and is subject to the jurisdiction of the Board with respect to the

matters referred to in this stipulation. Licensee states that he does not hold a license to practice dentistry in any other jurisdiction and does not hold any other professional or occupational licenses.

B. Facts. This stipulation is based upon the following facts:

Background

1. On June 16, 1986, the Board issued an Order of Suspended, Limited and Conditional License ("1986 Order") which suspended Licensee's license for a period of six weeks and placed certain limitations and conditions on his license. The 1986 Order is based upon findings of engaging in fraud.

2. On October 21, 1988, the Board issued a Consent Order of Stayed Suspension ("1988 Order") which stayed a suspension of Licensee's license for a period of two years and placed conditions on his license. The 1988 Order is based upon findings of improper prescribing of controlled substances.

3. On February 26, 1993, the Committee held a disciplinary conference with Licensee to discuss allegations from a complaint regarding Licensee having been arrested while in his car and charged with possession of an open bottle or receptacle containing intoxicating liquor and possession of marijuana in November 1992. During the conference, Licensee admitted that the police officer found the glass of liquor and marijuana cigarette in his car, but denied that the alcohol and marijuana belonged to him. In addition, Licensee stated that he had completed six to nine months of outpatient chemical dependency treatment for cocaine addiction in 1986, and that he had been drug-free since completing that treatment.

4. On April 16, 1993, the Board adopted a Stipulation and Order for Conditional License ("1993 Order") which placed conditions on Licensee's license to practice

dentistry in the State of Minnesota. Among other things, the 1993 Order required Licensee to abstain from the use of mood-altering drugs and submit to random toxicology screens.

5. On September 29, 1995, the Committee met with Licensee for a disciplinary conference to discuss violations of his 1993 Order including his positive toxicology screen result for benzodiazepine on September 15, 1995. During the conference, Licensee stated that he took a small white pill offered to him by one of his patients as a relaxant. Based on information provided at the conference, the Committee determined that no additional disciplinary action was warranted at that time. Licensee remained subject to his 1993 Order. On June 12, 1998, Licensee was granted an unconditional license by the Board.

6. On July 21, 2002, Licensee entered an inpatient treatment program at New Beginnings in Waverly, Minnesota, and completed treatment on August 10, 2002. Licensee's final diagnosis was cocaine and cannabis dependence. On November 19, 2002, Licensee reentered the inpatient treatment program at New Beginnings due to a relapse with cocaine. Licensee was discharged from New Beginnings on November 27, 2002, before completing his treatment.

7. On September 19, 2003, the Board adopted a Stipulation and Order for Conditional License ("2003 Order") which placed conditions on Licensee's license to practice dentistry in the State of Minnesota. The 2003 Order is based upon findings of chemical dependency and substandard oral surgery care.

8. In October 2005, the Board received a complaint against Licensee alleging inappropriate oral surgery care. On May 19, 2006, Licensee met with the Committee to discuss allegations concerning substandard oral surgery care. Based on information provided at the conference, the Committee determined that no additional disciplinary action was warranted at

that time. Licensee remained subject to his 2003 Order and continued monitoring by the Health Professionals Services Program (the “HPSP”). After completing the requirements of his 2003 Order, the Board granted Licensee an unconditional license on March 23, 2007.

9. On July 26, 2007, the Board received a complaint against Licensee alleging that he suffers from a physical, mental, emotional, or other disability which adversely affects his ability to perform the services for which he is licensed. After reviewing the complaint, the Committee referred it to the Minnesota Attorney General’s Office for investigation. An investigative report was submitted to the Committee on December 5, 2007. After reviewing the report, the Committee served upon Licensee a Stipulation to Cease Practicing Clinical Dentistry.

10. On January 22, 2008, Licensee agreed to and signed the Stipulation to Cease Practicing Clinical Dentistry (“2008 Stipulation to Cease”) which prohibits Licensee from practicing clinical dentistry in any manner in the State of Minnesota until the Board issues its Final Order.

Unprofessional Conduct and/or Inability to Practice with Reasonable Skill and Safety

11. Licensee engaged in personal conduct which brings discredit to the profession of dentistry and is unable to practice clinical dentistry with reasonable skill and safety due to a physical, mental, emotional, or other disability.

a. On June 18, 2007, Licensee contacted the HPSP. During the HPSP’s intake assessment, Licensee reported that he suffered a stroke and heart attack and was hospitalized for one month while on vacation in Florida in April 2007. Licensee reported seeing a neurologist, speech therapist, occupational therapist, and physical therapist. Licensee stated

that he has no cognitive impairments, only physical impairments related to the stroke/heart attack. The HPSP restricted Licensee from performing dental procedures.

b. On July 26, 2007, the HPSP notified the Board that Licensee was discharged from the program due to non-cooperation with returning enrollment materials. Licensee told the HPSP that he did not need to participate in the HPSP.

c. From August to November 2007, an Attorney General investigation was conducted regarding Licensee and a report was submitted to the Committee on December 5, 2007. The investigative report included the following information:

1) On July 16, 2007, Rita Wallace-Reed, M.D. ("Reed"), occupational medicine at HealthPartners, examined Licensee who requested a clearance to return to work. Wallace-Reed referred Licensee to Saunders Therapy Centers for a functional capacity evaluation. Reed also instructed Licensee to follow-up with her after completing the evaluation, but he failed to do so.

2) On August 7, 2007, David S. Alter, Ph.D., L.P. ("Alter") at HealthPartners performed a neuropsychological evaluation for Licensee. In his report, Alter indicated the following regarding Licensee: using crack cocaine for five days prior to stroke/heart attack in April 2007; and cocaine use and a number of other underlying health risk factors caused stroke/heart attack leaving him with right hemiparesis and aphasia. Since having his stroke/heart attack about four months ago, Alter noted that Licensee has "recovered significant levels of function." However, the results of the evaluation showed that functionally Licensee "continues to exhibit significant evidence of impairment. A number of his neurocognitive difficulties can be expected to impair his ability to practice as a dentist and to cause other difficulties with respect to his day-to-day functioning." Among other things, Alter

made the following recommendations regarding Licensee: not ready to return to dental practice at this time; continue participation in various rehabilitative therapies; and consider participation in chemical dependency treatment services due to use of crack cocaine.

3) From August 20 to 23, 2007, Therese J. Haney, OTR (“Haney”), occupational therapist at Saunders Therapy Centers, performed the functional capacity evaluation of Licensee. Among other things, Haney evaluated Licensee at his dental office while he performed a dental examination on a minor patient under the supervision of another dentist. Licensee is right hand dominant. During the evaluation, Haney observed that Licensee would be unable at this time to perform certain dental procedures requiring fine coordination due to lack of sufficient right hand fine dexterity. Haney also observed that Licensee had consistently high blood pressures of 150/100 to 165/110 during the evaluation. After completing the evaluation, Haney recommended that Licensee return to his position as a dentist on a part-time basis performing such services as dental examinations, impressions, prophylaxis, and scaling teeth. However, Haney’s recommendation is pending a review and approval by Licensee’s physician. Furthermore, Licensee was scheduled for a follow-up appointment in early November 2007 with Haney, but he failed to attend the appointment.

4) On August 31, 2007, Licensee stated that he is receiving occupational, speech, and physical therapy at Fairview Rehabilitation Services and described his physical condition as fine. Licensee indicated that he plans to continue to own/manage his two dental clinic sites and eventually perform examinations on patients in late December 2007, but not provide any treatment procedures. In addition, Licensee stated that two dentists are currently working for him.

5) On October 11, 2007, Richard C. Timming, M.D. (“Timming”), physical medicine at HealthPartners, examined Licensee’s progress in occupational, speech, and physical therapies. Among other things, Timming recommended to Licensee the following: continue with occupational, speech, and physical therapies; see primary care physician regarding high blood pressure; have the HPSP provide supervision or evaluation to assure he is safe to resume his dental practice; a referral to behavioral medicine due to concern with marital stressors; and participate in chemical dependency treatment.

6) On November 2, 2007, Steven Leitgen, D.D.S. (“Leitgen”), part-time employee since August 2007, stated that he has observed Licensee perform an examination and he appeared to be fairly competent and “certainly up to standards of doing a general dental exam.” Leitgen added that he is unaware of Licensee doing any other dental procedures other than patient examinations and no problems have occurred with patients.

7) On November 6, 2007, Christopher A. Darnell, M.D. (“Darnell”), Licensee’s primary care physician, examined Licensee. Prior to this appointment in May 2007, Darnell initially saw Licensee regarding his stroke/heart attack, cocaine abuse, and depression, and thereafter for a blood pressure check in October 2007. Darnell indicated that Licensee’s medical record from Florida revealed that he tested positive for cocaine and marijuana after entering the hospital for his stroke/heart attack in April 2007. Licensee’s medical record also stated, “He [Licensee] is somewhat apathetic about his issues regarding multisubstance abuse, but he states that he does not normally do it and it is just because he was on vacation.” Based upon Alter’s evaluation and his observations of Licensee, Darnell stated to the investigator, “The types of impairment he demonstrated raise significant questions about his ability to return to work. I’d be skeptical about his safety as far as I don’t think I’d want him to

be practicing. He needs to be in the HPSP to get some drug screening, and with the cognitive difficulties, I'd be hesitant to recommend any work."

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. §§150A.08, subd. 1(6) (unprofessional conduct) and 150A.08, subd. 1(8) (physical, mental, emotional or other disability which adversely affects ability to perform as a licensed dentist), and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order as follows:

Stayed Suspension. Licensee's license to practice dentistry in the State of Minnesota is hereby **SUSPENDED**. The suspension is **STAYED** contingent upon Licensee's compliance with all of the limitations and conditions set forth in paragraph E. below. None of the psychiatric or occupational therapy evaluations taken pursuant to this stipulation and order may be used by Licensee to satisfy any of the continuing dental education/professional development requirements of Minn. R. 3100.5100, subpart 2.

E. Limitations and Conditions of Stayed Suspension. Licensee and the Committee recommend that the Board issue an order which places LIMITATIONS and CONDITIONS on Licensee's license to practice dentistry in the State of Minnesota as follows:

LIMITATIONS

1. Licensee's license shall be subject to the following limitations:

Practicing Clinical Dentistry. Licensee is prohibited from personally practicing clinical dentistry at his dental practice or any other dental facility in the State of

Minnesota. Clinical dentistry includes, but is not limited to, hands-on treatment, diagnosing radiographs, and writing prescriptions.

CONDITIONS

2. Licensee's license shall be subject to the following conditions:

a. Participation in the HPSP.

1) Licensee shall totally abstain from ingesting, injecting, or otherwise taking or using any mood-altering chemical or drug, including, but not limited to alcohol. This prohibition does not apply to legend drugs, including controlled substances, which are prescribed for Licensee by a licensed physician or dentist as part of a course of treatment.

2) Within 14 days of the effective date of this Order, Licensee shall enroll in the HPSP for monitoring of his chemical dependency recovery. Licensee shall provide the HPSP with a copy of this stipulation and order at the time of enrollment. Licensee must return the signed Participation Agreement to the HPSP within 14 days of receiving the Participation Agreement from the HPSP. Failure to meet either of these deadlines will be considered a violation of this stipulation and order.

3) Licensee must be monitored until the HPSP determines Licensee is qualified to practice without conditions.

4) Licensee shall comply with all provisions of his HPSP Participation Agreement, including revisions subsequent to this Order. Licensee's failure to comply with his HPSP Participation Agreement is a violation of this stipulation and order.

b. Occupational – Functional Capacity Re-evaluation. Licensee is scheduled to participate in a functional capacity re-evaluation on March 24, 2008. If this

scheduled re-evaluation date should change for any reason, Licensee must notify the Committee in writing within ten days of this change. Within 14 days after completion of this re-evaluation, Licensee shall cause the evaluator to provide to the Committee a report of the re-evaluation and any subsequent recommendations. After reviewing the evaluator's report regarding Licensee, the Committee shall make a determination as to whether Licensee will be required to participate in any additional dexterity evaluations as specified by the Committee along with having the evaluator provide a report to the Committee. Licensee must bear the costs of any evaluations and preparation of reports. Furthermore, Licensee shall sign all necessary releases allowing the Board access to all evaluations, monitoring, or other records from any health professional or evaluator. Licensee shall allow the Board or its designee to communicate with all of Licensee's health professionals or evaluators.

c. Multidisciplinary Assessment. Within three months of the effective date of this Order, Licensee must complete a multidisciplinary assessment through a facility that has been pre-approved by the Committee. The nature, scope, and duration of the evaluation will be determined by the evaluator and may include chemical dependency, mental health, and a physical evaluation. Prior to the evaluation, Licensee shall provide the evaluator with a copy of this Order and copies of medical releases and medical records for any prior medical treatment for consideration in the complete evaluation. Within 14 days after completion of the evaluation, Licensee shall cause the evaluator to provide to the Committee a report of the evaluation and any subsequent treatment recommendations. Licensee shall comply with all recommendations the evaluator may make. Failure to follow all recommendations shall constitute violation of this Order. Licensee shall bear the costs of the evaluation, the preparation of the report, and compliance with any recommendations. Furthermore, Licensee shall sign all

necessary releases allowing the Board access to all medical and/or mental health evaluations, monitoring or other records from any treating health professional or evaluator. Licensee shall allow the Board or its designee to communicate with all of Licensee's treating professionals or evaluators.

d. Inspection. If the Board receives a complaint alleging additional misconduct or deems it necessary to evaluate Licensee's compliance with this stipulation and order, the Board's authorized representatives may inspect Licensee's dental office(s) during normal office hours without prior notification and to inspect and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

e. Other Conditions.

1) Licensee shall comply with the laws or rules of the Board of Dentistry. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this stipulation and order.

2) Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this stipulation and order, including requests for explanations, documents, office inspections, and/or appearances at conferences. Minn. R. 3100.6350 shall be applicable to such requests.

3) In Licensee's practice of dentistry, Licensee shall comply with the most current infection control requirements of Minn. R. 3100.6300 and 6950.1000 through 6950.1080, and with the Centers for Disease Control and Prevention, Public Health Service, United States Department of Health and Human Services, *Guidelines for Infection Control in*

Dental Health-Care Settings – 2003, Morbidity and Mortality Weekly Report, December 19, 2003 at 1.

4) In the event Licensee should leave Minnesota to reside, Licensee shall notify the Board in writing of the new location within five days. Periods of residency outside of Minnesota will not apply to the reduction of any period of Licensee's discipline in Minnesota.

F. Removal of Stayed Suspension. Licensee may petition to have the stayed suspension removed from Licensee's license at any regularly scheduled Board meeting provided that Licensee has complied with all the limitations and conditions of his stayed suspension. Moreover, Licensee's petition must be received by the Board at least 30 days prior to the Board meeting. Licensee has the burden of proving that Licensee has complied with the limitations and conditions of this stipulation and order and that Licensee is qualified to practice without a stayed suspension. Licensee's compliance with the foregoing requirements does not create a presumption that the stayed suspension should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the stayed suspension imposed by this order.

G. Fine for Violation of Order. If information or a report required by this stipulation and order is not submitted to the Board by the due date, or if Licensee otherwise violates this stipulation and order, the Committee may fine Licensee \$100 per late report or other violation. Licensee shall pay the fine and correct the violation within five days after service on Licensee of a demand for payment and correction. If Licensee fails to do so, the Committee may impose additional fines not to exceed \$500 per violation. The total of all fines may not exceed \$5,000. Licensee waives the right to seek review of the imposition of these fines under the

Administrative Procedure Act, by writ of certiorari under Minn. Stat. § 480A.06, by application to the Board, or otherwise. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

H. Additional Discipline for Violation of Order. If Licensee violates this stipulation and order, Minn. Stat. ch. 150A, or Minn. R. ch. 3100, the Board may impose additional discipline pursuant to the following procedure:

1. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Licensee a notice of the violation alleged by the Committee and of the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

2. At the hearing before the Board, the Committee and Licensee may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board will be limited to such affidavits and this stipulation and order. Licensee waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

3. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Licensee's practice, or suspension or revocation of Licensee's license.

I. Other Procedures for Resolution of Alleged Violations. Violation of this stipulation and order is a violation of Minn. Stat. § 150A.08, subd. 1(13). The Committee may attempt to resolve an alleged violation of the stipulation and order through the procedures of

Minn. Stat. § 214.103, subd. 6. Nothing herein limits (1) the Committee's right to initiate a proceeding against Licensee pursuant to Minn. Stat. ch. 14, or (2) the Committee's and the Board's right to temporarily suspend Licensee pursuant to Minn. Stat. § 150A.08, subd. 8, based on a violation of this stipulation and order or based on conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

J. Attendance at Conference. Licensee attended a conference with the Committee on February 22, 2008. The following Committee members attended the conference: Nadene Bunge, D.H.; Candace Mensing, D.D.S.; and Freeman Rosenblum, D.D.S. Assistant Attorney General Daphne A. Lundstrom represented the Committee at the conference. Licensee was represented by Leon A. Trawick in this matter, who has advised Licensee regarding this stipulation and order.

K. Waiver of Licensee's Rights. For the purpose of this stipulation, Licensee waives all procedures and proceedings before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the facts contained in this stipulation and order and to dispute the adequateness of discipline in a contested proceeding pursuant to Minn. Stat. ch. 14. Licensee agrees that upon the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

L. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation and order will be null and void and may not be used for any purpose by either party hereto. If this

stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14 and section 150A.08, Licensee agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.

M. Record. This stipulation, related investigative reports and other documents constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received after the date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

N. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 4. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. Data does not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. parts 60 and 61), the Board must report the disciplinary action contained in this stipulation and order to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

O. Entire Agreement. Licensee has read, understood, and agreed to this stipulation and is freely and voluntarily signing it. This stipulation contains the entire agreement between the parties hereto. Licensee is not relying on any other agreement or representations of any kind, verbal or otherwise.

P. Service and Effective Date. If approved by the Board, a copy of this stipulation and order will be served personally or by first class mail on Licensee. The order will be effective and deemed issued when it is signed by the President or Vice-President of the Board.

LICENSEE

Charles W. Sims
CHARLES W. SIMS, D.D.S.

By:

COMPLAINT COMMITTEE

Marshall Shragg
MARSHALL SHRAGG
Executive Director

Dated: 3-17-, 2008

Dated: MARCH 18th, 2008

ORDER

Upon consideration of the foregoing Stipulation and based upon all the files, records, and proceedings herein,

The terms of the Stipulation are approved and adopted, and the recommended disciplinary action set forth in the Stipulation is hereby issued as an Order of this Board effective this 28th day of March, 2008.

MINNESOTA BOARD
OF DENTISTRY

By: Nadene Bunge
NADENE BUNGE, D.H.
President